

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
COURT FILE NO.: CV - _____**

Kay Phernetton,

Plaintiff,

v.

AFNI, Inc.,

Defendant.

COMPLAINT

JURY TRIAL DEMANDED

JURISDICTION

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to 15 U.S.C. § 1692k(d).
2. This action arises out of Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA").
3. Venue is proper in this District because the acts and transactions occurred here, Plaintiff resides here, and Defendant transacts business here.

PARTIES

4. Plaintiff Kay Phernetton is a natural person who resides in the City of St. Paul, County of Ramsey, State of Minnesota, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).
5. Defendant AFNI, Inc. (hereinafter "Defendant AFNI") is a collection agency operating from an address of 404 Brock Drive, P.O. Box 3427, Bloomington, Illinois 61702-3427, and is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

6. Sometime on or before February 10, 2003, Plaintiff allegedly incurred a financial obligation that was primarily for personal, family or household purposes and is therefore a “debt” as that term is defined by 15 U.S.C. § 1692a(5), namely a Sprint PCS cellular telephone bill in the approximate amount of \$340.69.
7. Sometime thereafter, the alleged debt was consigned, placed or otherwise transferred to Defendant for collection from the Plaintiff.
8. On or about May 3, 2004, Plaintiff received a letter from Sprint PCS, the original creditor, stating that the account was opened fraudulently, the account has been closed, and the balance is zero. *See attached as Exhibit 1.*
9. On June 16, 2003, Plaintiff had previously requested that this item be removed from his credit report as a disputed item. *See attached as Exhibit 2.*
10. On September 21, 2004, Plaintiff again discovered that this inaccurate and negative account item was on his July 30, 2004, Trans Union credit report and called to speak with Defendant AFNI about why this item was still appearing on his credit reports.
11. At that time, Plaintiff spoke with a debt collector at Defendant AFNI, who then transferred him to an employee in the Defendant’s credit reporting department, and who advised Plaintiff that Defendant AFNI had been advised by the original creditor, Sprint, to remove this item from his consumer credit report in May 2004. Despite this fact, this item continues to appear on his Trans Union credit report.
12. On September 21, 2004, Plaintiff discovered this inaccurate and negative account item on his September 21, 2004, Equifax credit report.

13. Defendant AFNI's failure to accurately report this item as a fraudulent account on his consumer credit report, despite being told by both the Plaintiff and the original creditor to correct this item, has damaged Plaintiff's credit and is a violation of numerous and multiple provisions of the FDCPA, including but not limited to 15 U.S.C. §§ 1692d, 1692e, 1692e(2), 1692e(5), 1692e(8), and 1692f.
14. Plaintiff has suffered actual damages in the form of credit denials as a direct and proximate result of the inaccurate and negative information that Defendant AFNI improperly placed and maintained on his Equifax and TransUnion credit reports. *See attached as Exhibits 3 and 4.*

TRIAL BY JURY

15. Plaintiff is entitled to and hereby respectfully demands a trial by jury. US Const. amend. 7. Fed. R. Civ. Pro. 38.

CAUSES OF ACTION

COUNT I.

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. § 1692 et seq.

16. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
17. The foregoing acts and omissions of each and every Defendant constitute numerous and multiple violations of the FDCPA including, but not limited to, each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.
18. As a result of this Defendant's violations of the FDCPA, Plaintiff is therefore entitled to actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up

to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from this Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against this Defendant for:

COUNT I.

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. § 1692 et seq.

- for an award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against this Defendant;
- for an award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A) against this Defendant;
- for an award of costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) against this Defendant; and,
- for such other and further relief as may be just and proper.

Respectfully submitted,

Dated: October 6, 2004

THE BARRY LAW OFFICE, LTD.

By: s/Peter F. Barry
Peter F. Barry, Esq.
Attorney I.D.#0266577
342 East County Road D
St. Paul, Minnesota 55117-1275
Telephone: (651) 714-8800
Facsimile: (651) 501-8800
pbarry@lawpoint.com

Attorney for Plaintiff

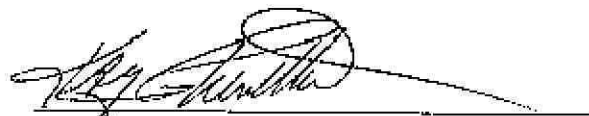
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VERIFICATION OF COMPLAINT AND CERTIFICATION BY PLAINTIFF

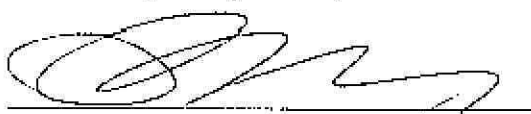
STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Plaintiff Kay Phernetton, having first been duly sworn and upon oath, deposes and says as follows:

1. I am a Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this civil Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified, or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.


Kay Phernetton

Subscribed and sworn to before me
this 21st day of September, 2004.


Notary Public



May 3, 2004

This is a statement acknowledging that Sprint-PCS Division has confirmed your personal identification was used to open an account with our company without your authorization. We have closed the account under your name and personal information and will adjust any balance owed to zero. Also, any collection activity that has been reported stemming from this issue will be removed. Therefore, you will not be responsible for any charges relating to this account. To protect your personal credit file, it is advised that you contact the following credit bureaus and inform them of the fraudulent activity.

Experian
888-397-3742
800-301-7195
POB 1017
Allen, TX 75002

Saturday 8 a.m. - 7 p.m. CST (Closed Sunday)

Sprint-PCS Division
Fraud Management

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*****SMGLP 327
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KAY PHERNETTON
174 ACKER ST E
SAINT PAUL MN 55117-5513

EXHIBIT

AFNI

404 Brock Dr.

PO Box 3427

Bloomington, IL 61702

RE: SPRINT ACS

Acct# 0048780241

Balance \$ 340.69

AFNI # 003340594-02

I dispute the debt listed above. This is not my debt.
Do not contact me ever again.

Thank you


6/16/03

EXHIBIT

2

RE: U.S. Bank Account Number: 4190 0015 9479 0024

Dear KAY R PHERNETTON:

Thank you for your recent request for a credit line increase. We cannot approve your request at this time for the following principal reasons:

- o SERIOUS DELINQUENCY, PUBL REC/COLL FILED
- o LEVEL OF DELINQUENCY ON ACCOUNTS
- o NUMBER OF ACCOUNTS WITH DELINQUENCY

In evaluating your request a consumer reporting agency provided us with information about you but the agency itself played no part in our decision and is unable to provide you with specific reasons why your request was denied. Under the Fair Credit Reporting Act, you have the right to a free copy of your report if you request it from the reporting agency within 60 days after you receive this notice. Also, if you find that any information in the report is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency listed below:

Trans Union Corporation
760 Sprout Rd/P.O. Box 390
Springfield, PA 19064-0390

Phone 1-800-888-4213
<http://www.transunion.com/direct>

We hope you will continue to enjoy and use the many fine benefits of your existing U.S. Bank account. We value you as a U.S. Bank customer and look forward to serving you in the future. Should you have any other questions regarding your U.S. Bank account, just give us a call at 1-800-685-7680.

CARDMEMBER SERVICE

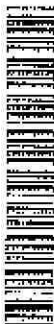
The creditor and issuer of this account is:
U.S. BANK NATIONAL ASSOCIATION ND, PO BOX 4345, FARGO, ND 58125-6341

EQUAL CREDIT OPPORTUNITY ACT NOTICE

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Comptroller of the Currency, Customer Assistance Bureau.



LDCGRA01 0008530
Kay R. Phornethon
374 Acker St E
Saint Paul MN 55117513746



Thank you for your recent credit application. We sincerely appreciate your interest in Discover Card. After carefully considering your application, however, we are unable to approve your request at this time for the following reason(s):

15055607 0102530

You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency below. This agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the below consumer reporting agency, if you request it no later than 60 days after you receive this notice.

In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the consumer reporting agency.



New Accounts Department
1-302-323-5535
Monday-Friday 9am-5pm EST



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